

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA,

Plaintiff,

Criminal No. 08-0028

**ELECTRONICALLY FILED**

v.

DERRICK STEVEN CLEMONS,

Defendant.

Order of Court

AND NOW, this 22<sup>nd</sup> day of March, 2010, upon consideration of defendant's Motion in Limine to Preclude the Government from Introducing Federal Rule of Evidence 404(b) (doc. no. 78), and the government's response thereto (doc. no. 85), said motion is DENIED.

The Court finds that the evidence of three prior controlled buys in which defendant sold crack to a confidential informant in April 2006, to be relevant under Fed. R. Evidence 404(b) to show that defendant had an intent to distribute the drugs seized from his person on October 13, 2007, and to rebut defendant's contention that while he possessed the crack-cocaine at issue, he did not intend to distribute said crack-cocaine. Also, after conducting a weighing of the probative value of the 404(b) evidence versus the prejudicial effect of the evidence, the Court finds that any danger of unfair prejudice may be cured by a proper limiting instruction. The parties shall meet and confer and submit a proposed Joint Limiting Instruction by March 24, 2010.

SO ORDERED this 22nd day of March, 2010.

s/Arthur J. Schwab

Arthur J. Schwab

United States District Judge

cc: All Registered ECF Counsel and Parties

